

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 29, 2013

AMENDED IN ASSEMBLY APRIL 17, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 994

Introduced by Assembly Member Lowenthal

February 22, 2013

An act to ~~add Section 1385.2 to, and to add and repeal Chapter 2.85~~ (commencing with Section 1001.41) of Title 6 of Part 2 of the Penal Code, relating to diversion programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 994, as amended, Lowenthal. Postplea misdemeanor diversion programs.

Under existing law, prosecution of an offense filed as a misdemeanor may be postponed, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication. Existing law requires the district attorney of each county annually to review any diversion program. Existing law prohibits a program from continuing without the approval of the district attorney and prohibits a person from participating in a diversion program without the authorization of the district attorney.

This bill would require each prosecuting attorney to establish a postplea misdemeanor diversion program within his or her jurisdiction and would authorize either the prosecuting attorney or the superior court to offer diversion to a first time misdemeanor defendant, as specified. The program would specify the administrative procedures and who would be eligible for the postplea misdemeanor diversion program. The bill would repeal these provisions as of January 1, 2019. By requiring diversion programs in local jurisdictions, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.85 (commencing with Section 1001.41)
2 is added to Title 6 of Part 2 of the Penal Code, to read:

3
4 CHAPTER 2.85. POSTPLEA MISDEMEANOR DIVERSION
5

6 1001.41. (a) Each prosecuting attorney shall, within his or her
7 jurisdiction, establish a misdemeanor diversion program by which
8 a first time misdemeanor offender defendant may be offered, at
9 the discretion of the prosecuting attorney, diversion in lieu of
10 sentencing as provided in this chapter. The superior court of the
11 county where the underlying offense occurred may also offer the
12 defendant diversion in lieu of sentencing as provided in this
13 chapter.

14 (b) As used in this chapter, "postplea misdemeanor diversion"
15 means the postponing or terminating of sentencing for a
16 misdemeanor charge against a defendant who has entered a plea
17 of guilty or nolo contendere and who meets the criteria in Section
18 1001.42 upon completion of a diversion program. Postplea
19 misdemeanor diversion may not be used in officer hearings,

1 administrative hearings, mediation, dispute resolution programs,
2 or restorative justice programs.

3 (c) This chapter shall apply to first-time misdemeanor
4 defendants, except as provided in paragraph (2) of subdivision (b)
5 of Section 1001.42, in order to reduce the stigma that is often
6 associated with a criminal record and to increase the likelihood
7 that a defendant will be able to obtain employment following the
8 successful completion of diversion in lieu of sentencing, as
9 provided in this chapter.

10 (d) It is the intent of the Legislature that this chapter not be
11 construed to preempt other current or future pretrial or precomplaint
12 diversion programs. It is also the intent of the Legislature that
13 current or future posttrial diversion programs not be preempted,
14 except as provided in Section 13201 or 13352.5 of the Vehicle
15 Code.

16 1001.42. (a) The postplea misdemeanor diversion program
17 established by this chapter may be offered to a defendant, alleged
18 in an accusatory pleading to have committed a misdemeanor, at
19 his or her first appearance or within 20 calendar days of his or her
20 first appearance, whichever occurs later, unless a jury has been
21 empaneled, or except as specified in subdivision (b).

22 (b) Postplea misdemeanor diversion under this chapter shall not
23 be offered when any of the following are met:

24 (1) When the accusatory pleading charges the commission of a
25 misdemeanor for which any of the following apply:

26 (A) Incarceration would be mandatory upon conviction of the
27 defendant.

28 (B) Registration would be required upon conviction pursuant
29 to Section 290.

30 (C) The granting of probation is prohibited.

31 (D) The magistrate determines that the offense shall be
32 prosecuted as a misdemeanor pursuant to paragraph (5) of
33 subdivision (b) of Section 17.

34 (E) (i) Force or violence against a person or peace officer is
35 charged.

36 (ii) The unlawful use, possession, sale, or transfer of a dangerous
37 weapon, firearm, or ammunition is charged.

38 (F) The victim is a person identified in Section 6211 of the
39 Family Code or the victim is a ~~minor~~ *minor*, or a dependent adult
40 *or an elder* pursuant to Section 368.

1 (G) A violation of Section 23152 *or* 23153 of the Vehicle Code
2 is charged.

3 (H) A violation of subdivision (c) of Section 192 or subdivision
4 (b) of Section 191.5 is charged.

5 (I) A violation of Section 186.22 is charged.

6 ~~(J) A violation of Section 387 is charged.~~

7 ~~(K) A violation of Section 6425 of the Labor Code is charged.~~

8 ~~(L)~~

9 (J) A violation of ~~an environmental crime~~ *an environmental crime or a workplace*
10 *safety crime* is charged, including, but not limited to, *an* alleged
11 ~~violations~~ violation of subdivision (a) of Section 5650 of the Fish
12 and Game Code, Section 8670.64 of the Government Code, Section
13 25507 of the Health and Safety Code, ~~and Section 6423 or 6425~~
14 *of the Labor Code, Section 387 of this code, or* Section 13387 of
15 the Water Code.

16 (2) The defendant has been convicted of any misdemeanor in
17 the previous 10 years, a misdemeanor involving force or violence,
18 or a felony.

19 (3) The defendant has previously been diverted pursuant to this
20 chapter or any other provision of law.

21 (4) The defendant is a partnership, firm, association, corporation,
22 limited liability company, or other legal entity.

23 (c) Nothing in this section is intended to preclude a defendant
24 from being offered postplea misdemeanor diversion pursuant to
25 this chapter when charged with a violation of Section 415.

26 (d) The prosecuting attorney may determine whether the
27 defendant is eligible for postplea misdemeanor diversion. If the
28 prosecuting attorney determines that the defendant is eligible for
29 postplea misdemeanor diversion, the prosecuting attorney shall
30 notify the defendant's attorney or the defendant if he or she is
31 appearing pro per of that determination.

32 (e) The notification required by subdivision (d) of this section
33 and subdivision (b) of Section 1001.44 shall include both of the
34 following:

35 (1) A full description of the procedures for postplea
36 misdemeanor diversion.

37 (2) A clear statement that failure to perform a term or condition
38 of the program or to comply with a court order will result in
39 sentencing upon the original guilty or nolo contendere plea as if
40 diversion had not occurred.

1 1001.43. (a) A defendant who chooses to participate in the
2 postplea misdemeanor diversion program under this chapter shall
3 be required to complete each of the following in order to be deemed
4 to have successfully completed his or her postplea misdemeanor
5 diversion program:

6 (1) Enroll in and complete at least one of the following programs
7 approved by the prosecuting attorney:

8 (A) Counseling.

9 (B) Community service.

10 (2) Make full restitution.

11 (3) Comply with any court-ordered protective order, stay-away
12 order, or order prohibiting firearm possession for the time period
13 that would have been imposed upon conviction of the underlying
14 charge.

15 (4) Remedy any violation of any law, code, or regulation that
16 was the basis for consideration of the accusatory pleading.

17 1001.44. (a) (1) If the prosecuting attorney determines that a
18 defendant is not eligible for the postplea misdemeanor diversion
19 program, and if the defendant has entered a guilty plea or a plea
20 of nolo contendere, the court may, upon setting forth reasons on
21 the record for overruling the determination of the prosecuting
22 attorney, independently offer the defendant postplea misdemeanor
23 diversion pursuant to this chapter. Judicial plea bargaining is
24 prohibited.

25 (2) If no official court reporter is present and no electronic
26 recording equipment is used, the court shall have the reasons for
27 overruling the determination of the prosecuting attorney pursuant
28 to paragraph (1) entered in the minutes of the court.

29 (b) If the court determines that the defendant is eligible for
30 postplea misdemeanor diversion, the prosecuting attorney shall
31 notify the defendant's attorney or the defendant if he or she is
32 appearing pro per of that determination.

33 (c) Postplea misdemeanor diversion offered by the court under
34 this section shall conform to the requirements of Section 1001.42.

35 (d) A court's order granting postplea misdemeanor diversion
36 under this section shall be appealable pursuant to paragraph (2),
37 (6), or (7) of subdivision (a) of Section 1466.

38 1001.45. (a) If a defendant owes restitution, the postplea
39 misdemeanor diversion program to which the defendant is referred
40 pursuant to this chapter shall establish procedures for the collection

1 and distribution of restitution to the victim or victims, and ~~the~~
2 ~~defendant shall~~ provide proof of payment to the court.

3 (b) The procedures established pursuant to this section shall
4 include a provision that allows the administrator of the postplea
5 misdemeanor diversion program to, if the administrator determines
6 there to be good cause, request an extension whereby the defendant
7 would be granted additional time to repay the amount of restitution
8 ordered by the court.

9 1001.46. (a) In any case in which a defendant has fulfilled the
10 conditions of his or her postplea misdemeanor diversion pursuant
11 to this chapter, if the defendant is not serving a sentence for an
12 offense, is not on probation for an offense, and is not charged with
13 the commission of an offense, the court shall, pursuant to Section
14 ~~1385.2~~, 1001.485, strike the defendant's plea of guilty or nolo
15 contendere and dismiss the action against the defendant. The
16 defendant, except as noted below, shall thereafter be released from
17 all penalties and disabilities resulting from the offense of which
18 he or she was granted postplea misdemeanor diversion, except as
19 provided in Section 13555 of the Vehicle Code. The defendant
20 may indicate in response to any question concerning his or her
21 prior criminal record that he or she was not arrested or diverted
22 for the offense and a record pertaining to an arrest resulting in a
23 successful completion of a postplea misdemeanor diversion
24 program shall not, without the defendant's consent, be used in any
25 way that could result in the denial of any employment, benefit,
26 license, or certificate except as specified in subdivision (c).
27 However, in any subsequent prosecution of the defendant for
28 another offense, the prior conviction may be pleaded and proved
29 and shall have the same effect as if postplea misdemeanor diversion
30 had not been granted or the accusation dismissed.

31 (b) Upon the dismissal of the defendant's accusations, the arrest
32 upon which the case was diverted shall be deemed to have never
33 occurred. The defendant shall be informed of his or her right, if
34 any, to petition for a certificate of rehabilitation and pardon.

35 (c) (1) The defendant shall be informed that the dismissal does
36 not relieve him or her of the obligation to disclose the conviction
37 in response to a direct question contained in a questionnaire or
38 application for public office, for licensure by a state or local
39 agency, or for contracting with the California State Lottery
40 Commission.

(2) Dismissal of an accusation pursuant to this section does not permit a person to own, possess, or have in his or her custody or control a firearm, or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation underlying a conviction pursuant to this section does not permit a person to hold public office if a conviction for that offense would otherwise prohibit the holding of that public office.

(4) The defendant shall be advised that, regardless of his or her successful completion of a postplea misdemeanor diversion program, the arrest upon which the case was diverted may be disclosed by the Department of Justice in response to a peace officer application request and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to a direct question contained in a questionnaire or application for a position as a peace officer, as defined in Section 830, or for a criminal justice agency, as defined in Section 13101.

1001.47. Nothing in this chapter is intended to limit the rights of a victim under Section 28 of Article I of the California Constitution.

1001.48. (a) A postplea diversion program in existence as of the effective date of this chapter shall be exempt from compliance with the provisions of this chapter.

(b) Notwithstanding subdivision (a), the superior court of the county in which the underlying offense occurred may offer the defendant postplea misdemeanor diversion pursuant to this chapter. If the defendant is diverted pursuant to this chapter, the program shall comply with the provisions of this chapter.

1001.485. The judge or magistrate shall, upon his or her motion or upon the petition of the prosecuting attorney, and in the furtherance of justice, order an action to be dismissed if the defendant has fulfilled the conditions of his or her postplea misdemeanor diversion pursuant to this chapter.

1001.49. This chapter shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

~~SEC. 2. Section 1385.2 is added to the Penal Code, to read:~~

1 ~~1385.2. The judge or magistrate shall, upon his or her motion~~
2 ~~or upon the petition of the prosecuting attorney, and in the~~
3 ~~furtherance of justice, order an action to be dismissed if the~~
4 ~~defendant has fulfilled the conditions of his or her postplea~~
5 ~~misdemeanor diversion pursuant to Chapter 2.85 (commencing~~
6 ~~with Section 1001.41) of Title 6 of Part 2 of the Penal Code.~~

7 ~~SEC. 3.~~

8 *SEC. 2.* If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.